



Wichita Police Department Policy Manual

Approved by:

Policy 306 - Miranda Warning and Waiver

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Maintained by:

Chief of Police

Issue/Rev.: R 7-21-05

MIRANDA DECISION REQUIREMENTS:

306.01 In *Miranda v. State of Arizona* (384 U.S. 436 [1966]), the United States Supreme Court held that when a person is taken into custody, or otherwise deprived of his/her freedom of action in a significant way, and when he/she is to be questioned for evidence of his/her own guilt, certain procedural safeguards must be afforded him/her to protect his/her Fifth Amendment right against involuntary self-incrimination.

306.02 The Miranda Warning process applies only to commissioned police officers. Civilians, including licensed private security officers, are not required to give the Miranda Warning prior to questioning a criminal suspect.

WPD MIRANDA WARNING CARD:

306.03 The WPD Miranda Warning Card [WPD Form 32-037] contains the warnings mandated by the Supreme Court ruling. All warnings on the card shall be read verbatim when Miranda is given. The suspect shall be asked to give a verbal affirmation of understanding to each point of the Miranda Warning [rather than by a nod of the head, or other physical gesture].

306.04 The reverse side of the WPD Miranda Warning Card contains the Waiver, the purpose of which is to ensure that it can be later shown that a suspect was aware of his/her rights [as guaranteed by Miranda] at the time he/she made a statement to police. The suspect must give a knowing, intelligent and voluntary waiver before a custodial interrogation can begin, and he/she must do so verbally.

306.05 If circumstances permit, a written rights and waiver form, signed by the suspect, is preferable to an oral reading of the Miranda Card. Officers shall use the WPD "Your Rights" form [WPD Form 32-038] for this purpose.

CONFESSION/STATEMENT OF SUSPECT MUST BE VOLUNTARY:

306.06 Any statement or confession made by a suspect to a law enforcement officer during a custodial interrogation must be voluntary to be admissible in court. Therefore, an officer shall not, either before or during an interrogation, make any threat or promise to the suspect in exchange for a statement and/or a confession.

306.07 Other factors which a court may consider in determining the voluntary nature of a suspect's confession to a law enforcement officer include:

- A. The duration and manner of interrogation;
- B. The suspect's ability to communicate with the outside world upon his/her request;
- C. The age, intelligence and background of the suspect; and
- D. The officer's fairness during interrogation.

CUSTODY AND INTERROGATION REQUIRE MIRANDA TO BE GIVEN:

306.08 Police questioning of individuals possibly involved in criminal acts does not always require that the Miranda Warning be given. The two (2) factors which determine whether it is required are custody and interrogation. If either is absent, Miranda is not applicable, and the warning is not necessary. However:

- A. If a person voluntarily makes incriminating statements, and the officer intends to ask him/her any questions to follow-up on those incriminating statements, then a Miranda Warning must be given.
- B. If there is any doubt about whether custody and/or interrogation is/are present, always resolve the doubt in favor of giving the Miranda Warning and securing a Waiver.

306.09 Prior to any police questioning, a person must be advised of his/her Miranda rights whenever he/she is interviewed for the purpose of eliciting a confession or an admission, and the person:

- A. Has been arrested and is in the custody of any law enforcement agency or officer; or
- B. Is not yet under arrest, but an arrest is clearly intended during, or at the conclusion of the interview; or
- C. Is in custody, the interviewing officer has sufficient knowledge to accuse him/her of a crime, and the purpose of the interrogation can be construed to obtain an admission; or
- D. Is significantly restricted in his/her freedom of action; or
- E. Is in custody on a traffic stop; however, routine traffic stops do not rise to the level of "custody" for Miranda purposes.

INVOCATION OF MIRANDA RIGHTS BY SUSPECT:

306.10 Questioning of a suspect shall cease when the subject of a custodial interrogation:

- A. Invokes his/her right to remain silent [he/she declines to make a statement]; or
- B. Is unable [through intoxication, etc.] or indicates his/her inability to either understand the Miranda Warning or to make a knowing, intelligent and voluntary waiver of his/her rights; or
- C. Indicates he/she wants to have counsel present before answering questions.

NOTE: If the suspect is vague in his/her response about whether he/she wants to have an attorney present, nor does he/she explicitly waive his/her right to an attorney, the officer must specifically determine whether the suspect wishes to have counsel present or will waive his/her right to counsel. Failure to do so could result in a confession being excluded from evidence.

RE-QUESTIONING SUSPECT AFTER HE/SHE HAS ASKED FOR AN ATTORNEY:

306.11 The United States Supreme Court has ruled [in *Minnick v. Mississippi*, 111 S.Ct. 486 (1990)] that once a suspect invokes his/her right to an attorney, the police must immediately cease questioning. Questioning of the suspect may not be resumed unless and until the suspect re-initiates communications with the police, and voluntarily agrees to waive his/her rights.

RE-READING MIRANDA TO A SUSPECT:

306.12 Officers shall re-read the Miranda Warning and Waiver to a suspect whenever:

- A. There is a significant delay between the time the Warning is first given and questioning begins; or
- B. An officer questions any suspect for the first time, even though the suspect received the Warning previously from another officer; or
- C. A suspect, who has previously invoked his/her right to have an attorney present, re-initiates contact or communication at a later time with an officer [see Section 306.11]; or
- D. A suspect invokes his/her right to an attorney, and after consulting with the attorney, decides to make a statement with the attorney present.

REPORTING REQUIREMENTS FOR MIRANDA WARNING/WAIVER:

306.13 In all cases of a custodial interrogation, regardless whether an arrest is made or not, an officer shall note in his/her report the entire circumstances surrounding the Miranda Warning and Waiver including date, time, and place given, and names and addresses of all witnesses present when the reading took place. In addition, the factors listed in Section 306.07 should be noted in the officer's report.